

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CONSTANCE FULLWOOD,

Plaintiff,

Case # 16-CV-6527-FPG

v.

DECISION AND ORDER

SDH SERVICES WEST, LLC, et al.,

Defendants.

Plaintiff Constance Fullwood, acting *pro se*, has filed a renewed motion for leave to appeal *in forma pauperis*. ECF No. 56. The Court denied Plaintiff's prior motion without prejudice, concluding that her submission was incomplete. ECF No. 55. While Plaintiff has now provided the Court with additional documentation, the Court nevertheless concludes that Plaintiff's renewed motion must be denied. This is because Plaintiff has failed to file a timely notice of appeal.

Under Federal Rule of Appellate Procedure 4(a)(1), Plaintiff was required to file a notice of appeal "within 30 days after entry of the judgment or order appealed from." Fed. R. App. P. 4(a)(1)(A). "The timely filing of a notice of appeal in a civil case is a jurisdictional requirement." *Napoli v. Town of New Windsor*, 600 F.3d 168, 170 (2d Cir. 2010) (quotation and internal brackets omitted). Judgment was entered on July 18, 2018, and Plaintiff has yet to file a notice of appeal.¹

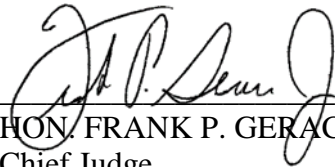
Courts have held that a motion to proceed *in forma pauperis* on appeal may not be granted where the moving party fails to file a timely notice of appeal. *See, e.g., Hurt v. Fla. Legislative Body*, No. 6:14-cv-469, 2014 WL 5055428, at *2 (M.D. Fla. Oct. 6, 2014) (stating that district court lacks jurisdiction to grant leave to appeal *in forma pauperis* where the notice of appeal is not

¹ On August 20, 2018, Plaintiff filed her first motion for leave to proceed in forma pauperis. ECF No. 54. The Court does not construe that document as a notice of appeal. *See* Fed. R. App. P. 3(c)(1) (identifying required contents for a notice of appeal).

timely filed); *Claborn v. Ohio*, No. 2:11-cv-679, 2012 WL 5378345, at *1 (S.D. Ohio Oct. 30, 2012) (collecting cases). Accordingly, because Plaintiff failed to file a timely notice of appeal, her motion to proceed *in forma pauperis* on appeal is DENIED.

IT IS SO ORDERED.

Dated: December 17, 2018
Rochester, New York



HON. FRANK P. GERACI, JR.
Chief Judge
United States District Court